IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 24247 of 2002(J)
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PETITIONER:
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1. RAJU KURIAN, AGED 54 YEARS,
S/O. LATE OONNITTAN, KANNANAKUZHAYATHU HOUSE,
RANNI, PATHANAMTHITTA DISTRICT.

2. P.ANANDA KURUP, HARIMANDIRAM,
PUNTHALA P.O., PANTHALAM, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.K.A.ABDUL SALAM

RESPONDENTS:
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1. STATE OF KERALA, REP.BY SECRETARY,
PUBLIC WORKS DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

2. CHIEF ENGINEER, P.W.D.(ROADS & BRIDGES),
THIRUVANANTHAPURAM.

3. SUPERINTENDING ENGINEER, P.W.D
(ROADS AND BRIDGES) SOUTH CIRCLE,
THIRUVANANTHAPURAM.

4. EXECUTIVE ENGINEER, P.W.D. ROADS
DIVISION, PATHANAMTHITTA.

BY GOVERNMENT PLEADER- ADV.SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 24247/2002

ORDER ON CMP NO. 41047/2002 IN O.P.No. 24247/2002

DISMISSED.

12/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

**APPENDIX**

PETITIONER'S EXHIBITS

EXT.P1 COPY OF EXTRACT OF THE AGREEMENT NO. 356/EEP/97-98 DATED 31/3/98 BETWEEN THE PETITIONER NO. 1 AND THE 4TH RESPONDENT.

EXT.P2 COPY OF THE AGREEMENT NO. 90/EEP/98-99 DATED 04/01/99 EXECUTED BETWEEN THE 2ND PETITIONER AND THE 4TH RESPONDENT.

EXT.P3 COPY OF THE AGREEMENT NO. 141/EEP/98-99 DATED 31/3/99 EXECUTED BETWEEN THE 2ND PETITIONER AND THE 4TH RESPONDENT.

// TRUE COPY //

PA TO JUDGE

jg

**C.N.RAMACHANDRAN NAIR, J.**

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**O.P. No. 24247 of 2002 J**

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**Dated, this the 12th day of March, 2007**

**J U D G M E N T**

This original petition is filed challenging proceedings for recovery of 10% of the contract amount towards penalty for belated completion of roadwork by the petitioners. Both the petitioners were awarded contract for repair and maintenance of the road to Sabarimala during 1997-98. The contract was executed in March 1998 with direction to the 1st petitioner to complete the work within three months. Obviously, relative short time for completion of work was fixed because road repair had to be carried out before the commencement of pilgrim season to Sabarimala, which started in the following September. The 1st petitioner instead of completing the work by middle of June 1998, completed the work only in June 2000, which caused hardship to the pilgrims and embarrassment to the Government, as the traffic during pilgrim season was affected on account of delay in completion of work. So far as the 2nd petitioner is concerned, the position is same but work was awarded in March 1998 with a direction to complete it by February 99. However,

the work was completed only by June 2000 consequently penalty was levied for the belated completion of work in terms of tender conditions. It is seen that penalty is for inordinate delay and the amount demanded is in terms of tender conditions, which the petitioners had accepted by accepting tender. Even though, petitioners have raised contentions that work was delayed on account of shortage of funds, which again is on account of delay in releasing payment by respondents, I do not think these contentions are tenable. Admittedly petitioners have to carry out the work with their own funds and not with advances. In the circumstance, there is no scope for interference with the demand of penalty for the belated completion of work. This original petition is accordingly dismissed.

**(C.N.RAMACHANDRAN NAIR, JUDGE.)**

jg